

JUL 24 1992

CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

A. L. LOCKHART, DIRECTOR,
ARKANSAS DEPARTMENT OF CORRECTION *Petitioner*

VS.

BOBBY RAY FRETWELL *Respondent*

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

JOINT APPENDIX

WINSTON BRYANT, ESQ.*
ARKANSAS ATTORNEY GENERAL
CLINT MILLER, ESQ.*
SENIOR ASSISTANT ATTY. GENERAL
J. BRENT STANDRIDGE*
ASSISTANT ATTY. GENERAL
200 TOWER BUILDING
323 CENTER STREET
LITTLE ROCK, ARKANSAS 72201
(501) 682-3657

RICKY R. MEDLOCK, ESQ.*
Appointed By This Court
421 Main Street
P. O. Drawer 475
Arkadelphia, AR 71923
(501) 246-0303

*Counsel of Record

PETITION FOR CERTIORARI FILED ON MARCH 2, 1992.
CERTIORARI GRANTED ON MAY 18, 1992.

TABLE OF CONTENTS

	Page
Chronological Index	1
Instructions given by the Searcy County Circuit Court to the jury at the penalty phase of Fretwell's capital felony murder trial that was held on August 6-8, 1985	3
Verdict forms filled out by jury in the penalty phase of Fretwell's trial	7
United States District Court for the Eastern District of Arkansas' Memorandum Opinion of June 29, 1990.....	13
United States Eighth Circuit Court of Appeals' Opinion of September 23, 1991	13

No. 91-1393

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

A. L. LOCKHART, DIRECTOR,
ARKANSAS DEPARTMENT OF CORRECTION *Petitioner*

VS.

BOBBY RAY FRETWELL *Respondent*

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

JOINT APPENDIX

CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES

Date	Proceedings
Jan. 31, 1985	The United States Eighth Circuit Court of Appeals hands down its decision in <i>Collins v. Lockhart</i> , 754 F.2d 258 (8th Cir.), <i>cert. denied</i> , 474 U.S. 1013 (1985).
April 29, 1985	Respondent Fretwell robs and murders Sherman Sullins.
May 1, 1985	The State of Arkansas charges Fretwell with capital felony murder for the April 29, 1985 robbery-murder of Sherman Sullins.

- Aug. 6-8, 1985 Respondent Fretwell stands trial in Searcy County Circuit Court for the capital felony offense of robbery-murder. The jury finds Fretwell guilty of capital felony murder and, in a separate penalty phase, sentences him to death.
- May 19, 1986 The Arkansas Supreme Court affirms Fretwell's capital felony murder conviction and death sentence in *Fretwell v. State*, 289 Ark. 91, 708 S.W.2d 630 (1986).
- April 27, 1987 The Arkansas Supreme Court in *Fretwell v. State*, 292 Ark. 96, 728 S.W.2d 180 (1987), denies Fretwell permission to seek post-conviction relief at the trial court level.
- Jan. 13, 1988 This Court hands down its opinion in *Lowenfield v. Phelps*, 484 U.S. 231 (1988).
- April 10, 1989 The United States Eighth Circuit Court of Appeals hands down its opinion in *Perry v. Lockhart*, 871 F.2d 1384 (8th Cir.), cert. denied, 493 U.S. 959 (1989).
- June 29, 1990 The United States District Court for the Eastern District of Arkansas hands down its memorandum opinion vacating Fretwell's death sentence and otherwise denying him habeas corpus relief in *Fretwell v. Lockhart*, 739 F. Supp. 1334 (E.D. Ark. 1990).
- Sept. 23, 1991 The United States Eighth Circuit Court of Appeals hands down its opinion affirming the district court's memorandum opinion in *Fretwell v. Lockhart*, 946 F.2d 571 (8th Cir. 1991).

- Dec. 4, 1991 The United States Eighth Circuit Court of Appeals denies Lockhart's petition for rehearing and suggestion for rehearing *en banc* in *Fretwell v. Lockhart*, 946 F.2d 571.
- March 2, 1992 Petitioner Lockhart docket with this Court his petition for a writ of certiorari to the United States Eighth Circuit Court of Appeals.
- May 18, 1992 This Court grants petitioner Lockhart's petition for a writ of certiorari to the United States Eighth Circuit Court of Appeals.

JURY INSTRUCTIONS GIVEN BY THE
SEARCY COUNTY CIRCUIT COURT TO THE JURY AT
THE PENALTY STAGE OF RESPONDENT FRETWELL'S
CAPITAL FELONY MURDER TRIAL
THAT WAS HELD ON AUGUST 6-8, 1985

[R. 25]

IN THE CIRCUIT COURT OF
SEARCY COUNTY, ARKANSAS

State of Arkansas *Plaintiff*

Vs. No. CR 85-14

Bobby Ray Fretwell *Defendant*

STATE'S JURY INSTRUCTION NO. _____
AMCI 1509

Members of the jury, you have found Bobby Ray Fretwell guilty of capital murder. After hearing arguments of counsel, you will again retire to deliberate and decide whether he is to be sentenced to death by electrocution or to life imprisonment without parole.

In determining which sentence shall be imposed, you may be required to make specific written findings as to the existence or absence of aggravating or mitigating circumstances. Appropriate forms will be provided for you, and I will now instruct you on the procedures that you must follow.

There are three forms for you to use in reaching your decision, and a verdict form for you to use when your verdict has been reached.

Form 1, which will be handed to you later, deals with aggravating circumstances. The appearance of any particular aggravating circumstance on the form does not mean that it actually existed in this case. These are specified by law and are the only aggravating circumstances that you may consider. The State has the burden of proving beyond a reasonable doubt that one or more of the listed aggravating circumstances existed at the time of the commission of the capital murder. If you find unanimously and beyond a reasonable doubt that one or more of these aggravating circumstances existed, then you will indicate your findings by checking the appropriate spaces on Form 1. If you do not unanimously find beyond a reasonable doubt the existence of any aggravating circumstance, then you will cease deliberations and indicate on the verdict form a sentence of life imprisonment without parole.

(File mark omitted in printing.)

[R. 26]

If you do unanimously find one or more aggravating circumstances, you should then complete Form 2, which deals with mitigating circumstances. Form 2 lists some factors that you may consider as mitigating circumstances. However, you are not limited to this list. You may, in your discretion, find other mitigating circumstances.

Unlike an aggravating circumstance, you are not required to be convinced (sic) of the existence of a mitigating circumstance beyond a reasonable doubt. A mitigating circumstance is shown if you believe from the evidence that it probably existed.

Form 2 is made up of four parts. Part A is a list of mitigating circumstances to be checked only if you unanimously agree that a particular circumstance existed. Part B is a list to be checked where some of you think a circumstance existed, but all do not agree. Part C is a list to reflect circumstances of which there may have been some evidence but no member of the jury feels that the circumstances existed. The last Part D is to be checked only if the jury concludes that there is no evidence of mitigating circumstances.

After making the determinations required to complete Form 1 and Form 2, if applicable, you will then complete Form 3.

In no event will you return a verdict imposing the death penalty unless you unanimously make three particular written findings on Form 3. These are:

First: That one or more aggravating circumstances existed beyond a reasonable doubt;

Second: That such aggravating circumstances outweigh beyond a reasonable doubt any mitigating circumstances found to exist; and

Third: That the aggravating circumstances justify beyond a reasonable doubt the sentence of death.

If you make those findings you will impose the death penalty.

Otherwise you will sentence the defendant to life imprisonment without parole.

After you have made your determination of Forms 1 and 2 and have reflected your conclusions on Form 3, then you must check the appropriate verdict on Form 4. Each of you must sign the verdict form.

You may now retire to consider your decision.

(File mark omitted in printing.)

**VERDICT FORMS FILLED OUT BY JURY IN THE
PENALTY PHASE OF FRETWELL'S TRIAL**

[R. 27]

**IN THE CIRCUIT COURT OF
SEARCY COUNTY, ARKANSAS**

State of Arkansas *Plaintiff*

Vs. No. _____

Bobby Ray Fretwell *Defendant*

Form 1

AGGRAVATING CIRCUMSTANCES

We, the jury, after careful deliberation, have unanimously determined that the following aggravating circumstance or circumstances existed beyond a reasonable doubt at the time of the commission of the capital murder:

() The capital murder was committed for the purpose of avoiding or preventing an arrest or effecting an escape from custody.

(X) The capital murder was committed for pecuniary gain.

/s/ W. E. Beaumont
FOREMAN

(File mark omitted in printing.)

[R. 28]

IN THE CIRCUIT COURT OF
SEARCY COUNTY, ARKANSAS

State of Arkansas *Plaintiff*

Vs. No. CR 85-14

Bobby Ray Fretwell *Defendant*

Form 2

MITIGATING CIRCUMSTANCES

A. ☐ WE UNANIMOUSLY FIND THAT THE
FOLLOWING MITIGATING CIRCUMSTANCE PROB-
ABLY EXISTED AT THE TIME OF THE MURDER:

(Check applicable circumstances and specify any addi-
tional ones.)

☐ The capital murder was committed while Bobby
Ray Fretwell was under extreme mental or emotional
disturbance.

☐ The capital murder was committed while Bobby
Ray Fretwell was acting under unusual pressures or influences
or under the domination of another person.

☐ The capital murder was committed while the
capacity of Bobby Ray Fretwell to appreciate the wrong-
fulness of his conduct or to conform his conduct to the
requirements of law was impaired as a result of mental disease
or defect, intoxication, or drug abuse.

☐ The youth of Bobby Ray Fretwell at the time of
the commission of the capital murder.

☐ The capital murder was committed by another
person and Bobby Ray Fretwell was an accomplice and his
participation relatively minor.

☐ Bobby Ray Fretwell has no significant history
of prior criminal activity.

(File mark omitted in printing.)

[R. 31 (Misordered in record)]

☐ Other: Specify in writing. _____

B. ☐ One or more members of the jury believe that
the following mitigating circumstances probably existed, but
the jury did not unanimously agree:

☐ The capital murder was committed while Bobby
Ray Fretwell was under extreme mental or emotional
disturbance.

☐ The capital murder was committed while Bobby
Ray Fretwell was acting under unusual pressures or influences
or under the domination of another person.

☐ The capital murder was committed while the
capacity of Bobby Ray Fretwell to appreciate the wrong-
fulness of his conduct or to conform his conduct to the
requirements of law was impaired as a result of mental disease
or defect, intoxication, or drug abuse.

☐ The youth of Bobby Ray Fretwell at the time of
the commission of the capital murder.

☐ The capital murder was committed by another
person and Bobby Ray Fretwell was an accomplice and his
participation relatively minor.

☐ Bobby Ray Fretwell has no significant history of prior criminal activity.

☐ Other: Specify in writing. _____
(File mark omitted in printing.)

[R. 30 (Misordered in record)]

C. ☐ There was evidence of the following mitigating circumstances, but the jury unanimously agreed that they did not exist at the time of the murder.

☐ The capital murder was committed while Bobby Ray Fretwell was under extreme mental or emotional disturbance.

☐ The capital murder was committed while Bobby Ray Fretwell was acting under unusual pressures or influences or under the domination of another person.

☐ The capital murder was committed while the capacity of Bobby Ray Fretwell to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect, intoxication, or drug abuse.

☐ The youth of Bobby Ray Fretwell at the time of the commission of the capital murder.

☐ The capital murder was committed by another person and Bobby Ray Fretwell was an accomplice and his participation relatively minor.

☐ Bobby Ray Fretwell has no significant history of prior criminal activity.

☐ Other: Specify in writing. _____

D. ☒ There was no evidence of any mitigating circumstance.

(Check if applicable.)

(File mark omitted in printing.)

[R. 29 (Misordered in record)]

Form 3

CONCLUSIONS

The Jury, having reached its final conclusions, will so indicate by having its Foreman place a check mark ☐ in the appropriate space in accordance with the Jury's findings. In order to check any space, your conclusions must be unanimous. The Foreman of the Jury will then sign at the end of this form.

WE THE JURY CONCLUDE:

(a) ☒ One or more aggravating circumstances DID exist beyond a reasonable doubt, at the time of the commission of the capital murder.

(If you do not unanimously agree to check paragraph (a) then skip (b) and (c), and sentence Bobby Ray Fretwell to life imprisonment without parole on Form 4.)

(b) ☒ The aggravating circumstances outweigh beyond a reasonable doubt any mitigating circumstances.

(If you do not unanimously agree to check paragraph (b) then skip (c), and sentence Bobby Ray Fretwell to life imprisonment without parole on Form 4.)

- (c) (☒) The aggravating circumstances justify beyond a reasonable doubt a sentence of death.

(If you do not unanimously agree to check paragraph (c), then sentence Bobby Ray Fretwell to life imprisonment without parole on Form 4.)

If you have checked paragraphs (a), (b) and (c) then sentence Bobby Ray Fretwell to death by electrocution on Form 4. Otherwise, sentence Bobby Ray Fretwell to life imprisonment without parole on Form 4.

/s/ W. E. Beaumont
FOREMAN

(File mark omitted in printing.)

[R. 33]

Form 4
VERDICT

We, the jury, after careful deliberation, have determined that Bobby Ray Fretwell shall be sentenced to:

- A. () LIFE IMPRISONMENT WITHOUT PAROLE.
B. (☒) DEATH BY ELECTROCUTION.

(Each juror must sign this verdict.)

s/W. E. Beaumont Foreman	s/Marvene Kyle
s/James F. Owens	s/Sandra F. Black
s/James R. Kelley	s/Glenda K. Grinder
s/Mary M. Anderson	s/Alva Dean Stills
s/Daniel E. Collins	s/Ronald Morrison
s/illegible	s/Gene Stinnett

(File mark omitted in printing.)

The United States District Court for the Eastern District of Arkansas' memorandum opinion of June 29, 1990, vacating respondent Fretwell's death sentence pursuant to 28 U.S.C. §2254 can be found in the appendix to petitioner Lockhart's petition for a writ of certiorari filed with this Court. The district court's memorandum opinion appears at A-21 to A-28 of this appendix.

The United States Eighth Circuit Court of Appeals' opinion of September 23, 1991, affirming the June 29, 1990 memorandum opinion of the United States District Court for the Eastern District of Arkansas can be found in the appendix to petitioner Lockhart's petition for a writ of certiorari filed with this Court. The Eighth Circuit's opinion appears at A-1 to A-20 of this appendix. The Eighth Circuit's judgment, issued after denial of rehearing, appears at A-29 of this appendix.

Respectfully submitted,

WINSTON BRYANT, ESQ.*
ARKANSAS ATTORNEY GENERAL
CLINT MILLER, ESQ.*
SENIOR ASSISTANT ATTY. GENERAL
J. BRENT STANDRIDGE*
ASSISTANT ATTY. GENERAL
200 TOWER BUILDING
323 CENTER STREET
LITTLE ROCK, ARKANSAS 72201
(501) 682-3657

RICKY R. MEDLOCK, ESQ.*
Appointed By This Court
421 Main Street
P.O. Drawer 475
Arkadelphia, AR 71923
(501) 246-0303

*Counsel of Record